

The Flinn Report

Illinois

Regulation

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

PROPERTY TAXES

The Property Tax Appeal Board adopted amendments to "Practice and Procedure for Appeals Before the Property Tax Appeal Board" (86 Ill Adm Code 1910), effective 5/16/06, to detail the nature of business record evidence and govern the transcription of hearings. Additional amendments provide a mechanism for a contesting party to amend a petition for appeal of assessment valuation after the original filing with PTAB. Further changes prevent a taxpayer or property owner from denying access to the property for valuation purposes and then challenging the opposing party's evidence due to failure to inspect the property, and, in cases where parties are represented by attorneys and the change in assessed valuation sought is at least \$100,000, allow the deposition of a witness who may be unavailable at a hearing. A proposed change that was not included in the adopted text required that when sales ratio studies are used in property tax appeals for Cook County property other than residential dwellings of 6 units or less designated as Class 2 real estate, there must be clear and convincing evidence that the studies are random,

representative, properly edited, and properly adjusted according to Illinois case law. Also, concerning admissible business record evidence, a change since 1st Notice allows the testimony of a record custodian or another qualified witness who is familiar with record maintenance procedures. Those affected by this rulemaking include property owners contesting assessed valuations before PTAB.

Questions/requests for copies: James W. Chipman, PTAB, 402 Stratton Bldg., Springfield IL 62706, 217/782-6076, e-mail: james.chipman@illinois.gov

AGRICULTURE

The DEPARTMENT OF AGRICULTURE adopted amendments for the following 4 Parts, all effective 5/22/06: "Definitions" (8 Ill Adm Code 20); "Hatcheries, Poultry Flocks, and Products Thereof" (8 Ill Adm Code 55); "Bovine Brucellosis" (8 Ill Adm Code 75); and "Illinois Bovidae and Cervidae Tuberculosis Eradication Act" (8 Ill Adm Code 80). All of the rulemakings update references to federal regulations. Additional revisions to Part 20 include adding a definition for "Milk

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DOT PROCUREMENT

The DEPARTMENT OF TRANSPORTATION proposed amendments to "Prequalification of Contractors and Issuance of Plans and Proposals" (44 Ill Adm Code 650). The rulemaking clarifies the application cut-off dates for initial and renewal applicants for a Certificate of Eligibility to do business with the Department. Also, a renewal applicant's prequalification rating determination and approval will not be applicable if renewal information is received after the project's bid cut-off date announced in the *Transportation Bulletin* published by the Department. Website addresses for the Department are added, and 2 new specified grounds for denial or revocation of prequalification status are suspension or debarment under the Procurement of Domestic Products Act and statutory suspension or debarment under the Illinois Procurement Code. The rulemaking alters 2 standards by which a contractor may achieve the "unaudited" financial status category for the financial responsibility component of prequalification: a balance sheet prepared and submitted by an applicant limits the applicant's financial rating to no more than \$.5 million, and the applicant is limited to no more than \$1.5 million when a review and compiled balance sheet is prepared by an accountant. The amendments also eliminate the restriction that specifies unaudited applicants may receive no

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

ELISA" (a diagnostic test using milk enzymes to detect certain diseases in a herd through an enzyme-linked immunosorbent assay), expanding the definition of "premises identification number" to include a U.S. Department of Agriculture (USDA) assigned number for locations where livestock are located or co-mingled, and striking the Peoria Union Stockyards as the example for a "public stockyard". Part 75 changes include striking the "card" (buffered brucella antigen) test and the optional supplemental "CITE" test from the official tests used by licensed livestock auctions and replacing them with unspecified "other tests" approved by the USDA and the Department. (The current buffered acidified plate antigen test is not affected.) The requirement that cattle entering Illinois from Class B or C states be identified by a hot iron brand on either or both jaws is stricken. Those brands continue to be required on either hip, but the location of the "S" brand (slaughter) is changed. Changes to Part 80 clarify that the 2 individual negative tests required for cattle or bison from non-accredited free states or Canadian provinces entering Illinois are in addition to the original negative herd test. A Part 80 change that is due to an updated federal regulation reduces the length of time between the official health certificate examination and entry into Illinois from 60 to 30 days for sheep and goats. The requirement that an owner's written statement attesting that the sheep or goats are disease-free must accompany the health certificate is stricken. Other revisions clarify that elk 6 months of age and over entering Illinois must be certified brucellosis-free 60 days prior to entry, strike obsolete text regarding chronic wasting disease, strike the current time requirements for reporting and permitting cervids that are entering Illinois for slaughter purposes, and require that the slaughter facility's name and address be included on the permit application. A "certified Johne's disease veterinarian" is defined as a veterinarian who has completed a prescribed course and field training for

conducting risk assessments and writing herd plans for herds dealing with the disease. Also, individuals desiring to enroll and maintain their cattle, buffalo, or bison herds in the voluntary Johne's disease risk management program must have an annual risk assessment and updated herd plan completed by a certified Johne's disease veterinarian or a state or federal veterinarian. No animals from herds restricted due to Johne's disease may be sold except to slaughter unless the animals are tested negative within 30 days prior to sale (previously, after sale). In addition, this negative test must be a "serum antibody test". Alternatively, an animal may be sold within 30 days after receiving negative results on an "organism detection test". Livestock producers, buyers, owners, and shippers and livestock facilities, licensed breeders, and veterinarians may be affected by these rulemakings.

🔑 ANIMAL DISEASE LABS

The Department also adopted amendments for rules titled "Animal Disease Laboratories Act" (8 Ill Adm Code 110), effective 5/22/06, to add a new virology test called "RT-PCR" to indicate genetic diseases and include a \$30 fee per test. The zip code for the State-Federal Serology Laboratory at the State Fairgrounds is corrected, also. A change since 1st Notice lists the location of the laboratory that will perform the new test as Galesburg rather than Centralia.

Questions/requests for copies of the 5 DOA rulemakings above: Linda Rhodes, DOA, State Fairgrounds, Springfield IL 62794-9281, 217/785-5713, Fax 217/785-4505.

🔑 FISHING TOURNAMENTS AND RECREATIONAL TRAIL GRANTS

The Department of Natural Resources adopted amendments for the following 2 Parts, both effective 5/22/06: "Competitive Tournament Fishing on State Owned and /or Leased Water Areas (17 Ill Adm Code 115) and "Off-

Highway Vehicle Recreational Trails Grant Program" (17 Ill Adm Code 3045). The Part 115 amendment adds Coffeen Lake in Montgomery County to the list of lakes that require a permit before a competitive fishing tournament may be held. Part 3045 amendments allow the DNR director, with the advice of the Off-Highway Vehicle Trails Advisory Board, to modify the grant repayment provisions in cases of a catastrophic illness or injury to the grant recipient or principals of the grantee (e.g., spouse, children, parents). It also strikes a statement that all financial records must be kept for 5 years for audit purposes and replaces it with a requirement that the records be retained in accordance with State law. A change in Part 3045 since 1st Notice adds the grantee to the provision concerning catastrophic illness or injury and clarifies the meaning of the term "principals of the grantee". Those affected by the Part 115 amendment include any small business, not-for-profit corporation, or municipality that conducts a fishing tournament in the applicable water areas. Units of local government, private off-highway vehicle (OHV) clubs or other Illinois organizations having not-for-profit incorporation status, business entities, and private individuals seeking grants for OHV trails may be affected by the Part 3045 amendments.

Questions/requests for copies of the 2 rulemakings above: Jack Price, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

STATE EMPLOYEES

The Department of Central Management Services adopted amendments to "Pay Plan" (80 Ill Adm Code 310) by peremptory rulemaking, effective 5/18/06, to reflect 3 memoranda of understanding (MOU) between the State and the American Federation of State, County and Municipal Employees (AFSCME). The first MOU, effective 12/7/05, assigns the check issuance machine supervisor job title to bargaining unit RC-014 and pay grade 11. The second MOU, effective 1/19/

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06, assigns the liability claims adjuster II job title to bargaining unit RC-062 and pay grade 18. The third MOU, effective 1/25/06, includes the reproduction service supervisor I job title in bargaining unit RC-014 at pay grade 13. All 3 MOUs were signed 4/20/06. The agencies affected are Central Management Services, Employment Security, Workers' Compensation Commission, Aging, Environmental Protection Agency, Public Health, Transportation, and Veterans' Affairs.

Questions/requests for copies: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, Fax 217/524-4570.

☞ ALL KIDS HEALTH INSURANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an emergency amendment to "Special Eligibility Groups" (89 Ill Adm Code 118) and new rules by emergency rulemaking for the "Covering All Kids Health Insurance Program" (89 Ill Adm Code 123), both effective 5/17/06, for a maximum of 150 days, making health insurance and prescription drug coverage more widely available to Illinois children. Identical proposed rule-

makings appear in this issue of the *Illinois Register*. The Part 118 amendment removes the prohibition against eligibility for medical assistance, which includes Kidcare and All Kids, for children of certain non-citizens (persons lawfully admitted for permanent residence under the Immigration and Nationality Act and parolees temporarily admitted for humanitarian reasons or significant public benefit) to insure parity with children of citizens. New Part 123 details insurance eligibility criteria, enrollment procedures, how countable income is determined for the assessment of premiums, appeals, renewals, adding coverage for additional children, covered services, applicable copayments, and provider requirements. Any family with a child under age 19 who is an Illinois resident may be eligible based on the family's income in relation to the federal poverty level. Medical providers may be affected by these rulemakings.

Questions/requests for copies/comments concerning the proposed rulemakings until 7/17/06: Tamara Tanzillo Hoffman, HFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/557-7157.

☞ ELDER CARE PROGRAMS

The DEPARTMENT ON AGING adopted emergency amendments to "Community Care Programs" (89 Ill Adm Code 240), effective 6/1/06, for a maximum of 150 days, to require that service providers prove that they expend at least 77% of the total revenues they receive from the Department on direct homemaker service worker personnel costs. The remaining 23% of the total revenues received may be spent at the service provider's discretion on administrative or program support costs. An identical proposed rulemaking appears in this issue of the *Illinois Register*. Service providers who contract to provide homemaker services to DoA clients may be affected by these rulemakings.

Questions/requests for copies/comments concerning the proposed rulemaking until 7/17/06: George M. Sisk, DoA, 421 E. Capitol Ave., #100, Springfield IL 62701-1789, 217/785-3346.

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more than \$600,000 in transportation contracts, including local agency motor fuel tax contracts, during any 12-month period. Balance sheet appraisals using the fair market value of equipment shall be the value of that equipment discounted by 20% when evaluating balance sheet items submitted by applicants. Also, a criterion is added to measure quality control and quality assurance in evaluating a contractor or subcontractor in the performance factor element of prequalification assessment. In addition, the rulemaking eliminates the actual possession of leased equipment requirements for work ratings, instead requiring only that leased

equipment be "available". In the appendix that lists available work categories, polyurea pavement marking is added. This rulemaking will affect small highway contractors as well as units of local government subject to DOT contracting procedures.

Questions/requests for copies/comments until 7/17/06: Michael Copp, DOT, 2300 S. Dirksen Pkwy., Rm. 322, Springfield IL 62764, 217/782-3413.

SCHOOLS

The STATE BOARD OF EDUCATION proposed amendments for "Public Schools Evaluation, Recognition and

Supervision" (23 Ill Adm Code 1). The amendments require school districts to provide information on the qualifications of its professional and paraprofessional staff to the Board through SBE's electronic data system or by an alternative means if the school district lacks technological capacity to participate. The rulemaking also clarifies that the "major teaching assignment" for middle grade teachers is the subject taught for more time than any other subject. Further amendments implement Public Act 93-803, which allows school districts to deny enrollment to a student 16 years and older for one semester if the student fails to meet minimum academic or minimum

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attendance standards; the proposed amendments set out procedures for parents or guardians to appeal this denial. Additionally, amendments cross-reference Public Act 94-198, which exempts students from the daily physical education requirement, if a school is engaged in "block scheduling". (Block scheduling organizes the school's daily class schedule into larger blocks of time (more than 60 minutes) than the traditional daily class schedule. Students still complete the yearly course requirements, only in a different scheduling format.)

SCHOOL CLASS SIZE GRANTS

SBE also proposed a new Part titled "Class Size Reduction Grants" (23 Ill Adm Code 565) that implements one Public Act and one House Bill that is anticipated to be signed by the bill's specified 7/1/06 effective date. PA 93-814 creates a kindergarten through 3rd grade (K-3) class-size reduction (20 pupils) grant program for schools that are on the academic early warning or watch lists. SB 2882, which passed both houses and has been sent to the Governor, creates a pilot class-size reduction (15 pupils) grant program. Subpart A of the proposed rules sets out the criteria for K-3 class-size reduction grants: eligible applicants, program specifications (for a 3 year period, following one grade level or one class), RFP/application requirements, SBE criteria for application review (need, space and teacher availability at the school, and availability of equipment with local contribution), and allocation of funds. Subpart B sets out the criteria for the pilot program using the same pool of eligible appli-

cants, program specifications, and RFP/application requirements. SBE's criteria for review of the pilot program RFPs and applications focuses on rationale and cost-effectiveness, evidence of an evaluation plan, and need. Allocation of funds will be 1/3 to Chicago; 1/3 to the rest of Cook County and DuPage, Kane, Lake, McHenry, and Will counties; and 1/3 to the rest of the State.

Questions/requests for copies/comments concerning the 2 SBE rulemakings above until 7/17/06: Sally Vogl, SBE, 100 N. First St. (S-493), Springfield IL 62777, 217/782-5270, e-mail: rules@isbe.net

WATERCRAFT LICENSES

The DEPARTMENT OF NATURAL RESOURCES proposed amendments for rules titled "Operation of Watercraft Carrying Passengers for Hire on Illinois Waters" (17 Ill Adm Code 2080). The rulemaking changes the DNR passenger-for-hire and boat rental licenses to identify the inland bodies of water where the licensee conducts business and the particular vessels licensees are authorized to operate. The licenses must be prominently displayed if practical or kept on board the vessel for inspection. Those affected by this rulemaking include boat rental and passenger-for-hire operations.

Questions/requests for copies/comments until 7/17/06: Jack Price at the DNR address and telephone number above.

MERCURY EMISSIONS

The POLLUTION CONTROL BOARD announced a correction for a proposed new Part titled "Control of

Emissions from Large Combustion Sources" (35 Ill Adm Code 225) that was published in the 5/19/06 *Illinois Register*. The rulemaking requires Illinois coal-fired electric generating units (EGUs) that serve a generator greater than 25 megawatts producing electricity for sale to begin to use mercury control technology necessary to achieve the numerical standards set by this proposed Part beginning 7/1/09. New and existing sources are given 2 alternative mercury emission standards to demonstrate compliance. The rulemaking also exempts certain EGUs. A rulemaking on this same topic originally proposed in the 3/31/06 *Illinois Register* was withdrawn pursuant to a preliminary injunction entered by the Sangamon County Circuit Court on 5/1/06. The court enjoined the Board from proceeding under Section 28.5 of the Environmental Protection Act to adopt the rulemaking under "fast-track" rulemaking procedures. Therefore, PCB instead proposed the same rulemaking on 5/19/06 under its general rulemaking authority. The correction published this week removes a statutory citation to fast-track rulemaking that was inadvertently retained in the rulemaking's authority note. Rule text otherwise remains unchanged. Please note that the 45-day 1st Notice Period starts anew with this correction.

Questions/requests for copies/comments until 7/17/06: Dorothy Gunn, Clerk, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620. For more information: Marie Tipsord at the same address, 312/814-4925, e-mail: tipsordm@ipcb.state.il.us. Please reference docket R06-25.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's June 13, 2006 meeting in Chicago.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Massage Licensing Act" (68 Ill Adm Code 1284) proposed 3/17/06 (30 Ill Reg 4532)

SECRETARY OF STATE

"Departmental Duties" (2 Ill Adm Code 552) proposed 2/24/06 (30 Ill Reg 2501)

DEPARTMENT OF NATURAL RESOURCES

"White-Tailed Deer Hunting by Use of Bow and Arrow" (17 Ill Adm Code 670) proposed 3/31/06 (30 Ill Reg 5873)

"White-Tailed Deer Hunting by Use of Firearms" (17 Ill Adm Code 650) proposed 3/31/06 (30 Ill Reg 5832)

STATE EMPLOYEES' RETIREMENT SYSTEM

"The Administration and Operation of the State Employees' Retirement System of Illinois" (80 Ill Adm Code 1540) proposed 3/24/06 (30 Ill Reg 5506)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Pay Plan" (80 Ill Adm Code 310) proposed 4/7/06 (30 Ill Reg 6024)

DEPARTMENT OF PUBLIC HEALTH

"Heartsaver AED Grant Code" (77 Ill Adm Code 530) proposed 4/14/06 (30 Ill Reg 6294)

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